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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Assessment and Collection	)	MD Docket No. 96-84
of Regulatory Fees for	)	
Fiscal Year 1996	)	

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To: The Managing Director

PETITION FOR WAIVER

Intermedia Communications Inc. (formerly and now d/b/a EMI Communications Corporation) ("ICI"), by its attorneys and pursuant to Sections 1.3 and 1.1166[1/] of the Commission's rules, hereby seeks a waiver of Section 1.1154 of the Commission's rules insofar as its application results in "double charging" ICI.[2/] Specifically, Section 1.1154 subjects ICI to both a call sign fee for its microwave licenses and a gross revenues fee for its interexchange service utilizing those licenses. Thus, ICI asks that the Commission waive the gross revenues fee.[3/]

[1/] Although Section 1.1166(c) states that a request for waiver must be accompanied by the required fee and FCC Form 159, the standard interexchange carrier fee, which is the subject of this petition, is not due and payable at this time.

[2/] See In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1996, Report and Order, MD Docket No. 96-84, FCC 96-295 (released July 5, 1996) at ¶¶ 31, 32 ("1996 Fees Order").

[3/] In 1995, EMI Communications Corporation, based upon the same circumstances described herein, also filed a petition for waiver of Section 1.1154, as well as a petition for partial reconsideration of the order establishing the various fees. See In the Matters of Assessment and Collection of Regulatory Fees for Fiscal Year 1995, Price Cap Treatment of Regulatory Fees Imposed by Section 9 of the Act, Report and Order, MD Docket 95-3, FCC 95-227 (released June 19, 1995) at ¶ 91 ("1995 Fees Order"). Those petitions remain pending.

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ICI is the Part 21 licensee of nearly 200 point-to-point microwave stations. In addition to traditional point-to-point microwave service (e.g., distribution of radio and television signals), ICI uses these licenses to provide interexchange service in the eastern and northeastern United States.[4] ICI competes directly with other landline interexchange providers.

Pursuant to the 1996 Report and Order, released July 5, 1996, in the above-captioned proceeding ("1996 Fees Order"), ICI, like other microwave providers, is required to pay $155 annually for each microwave call sign.[5] Because the company also provides long distance service, however, it is required to pay a fee based upon the gross revenues derived from its interexchange service as well as the call sign assessment.[6]

ICI is not aware of any other situation whereby a provider is required to pay fees once for the technology it uses and a second time for the service it provides using that technology. Indeed, in the 1996 Fees Order, the Commission adopted special measures to keep from double charging regulated industries. For example, the Commission provided that, "[i]n order to avoid imposing a double payment burden on resellers, [it] will permit interexchange carriers to subtract from their reported gross interstate revenues, . . . , any payments made to underlying carriers for telecommunications facilities or services."[7]

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[4] Although ICI does provide telecommunications service utilizing facilities other than point-to-point microwave, it is not seeking a waiver of the Commission's regulatory fees requirements with respect to the revenues generated from those services. This waiver request is limited solely to the services provided by ICI d/b/a EMI via its point-to-point microwave facilities.

[5] 47 C.F.R. § 1.1154; 1996 Fees Order at Appendix F, ¶ 31.

[6] 47 C.F.R. § 1.1154; 1996 Fees Order at Appendix F, ¶ 32.

[7] 1996 Fees Order at Appendix F, ¶ 32.

Notably, with regard to mobile services, the Commission has stated that it does not have the data necessary to structure a fee schedule in a manner that would protect resellers from double payments.[8/] Thus, while mobile licensees pay fees assessed on the basis of mobile units or telephone numbers, resellers are not required to pay any fees whatsoever.[9/]

Other point-to-point microwave licensees that use their frequencies solely for video and data distribution are not subject to separate fees based upon the revenues derived from their transport business.[10/] In addition, Local Television Transmission Radio Service, Digital Electronic Message Service, Multipoint Distribution Service ("MDS"), and Multichannel Multipoint Distribution Service ("MMDS") licensees are required to pay only the $155 per call sign fee.[11/] This is especially noteworthy in the case of MDS and MMDS licensees, which provide "cable" service over their wireless facilities. In contrast to its treatment of ICI, the Commission has declined to assess both a call sign fee and a per-subscriber cable fee on these licensees.[12/]

Similarly, as noted previously, mobile operators are not assessed revenues-based fees on top of the per-unit fees, although many mobile licensees, like ICI, are users of the

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8/ 1996 Fees Order at Appendix F, ¶ 14; 1995 Fees Order at ¶ 91.

9/ Id.

10/ See 1996 Fees Order at Appendix F, ¶ 31.

11/ Id.

12/ See id. at ¶ 56. Indeed, the Commission rejected the National Cable Television Association's ("NCTA") request that the MMDS fee be calculated on a per-subscriber basis instead of a per call sign basis. Id. It apparently was assumed by both NCTA and the Commission that MMDS operators would not, and should not, be subject to both fees.

interstate network.[13] Significantly, in determining that even those CMRS operators that do not fully connect with the public switched network should be subject to regulatory fees, the Commission stated that "mobile providers must pay fees based upon [the Commission's] regulatory costs rather than the particular use that a provider makes of its frequencies."[14] The Commission should apply this principle in assessing fees on microwave licenses by declining to charge first for the call sign and a second time for the particular use the licensee makes of the spectrum.

Requiring payment of both a gross revenues fee and a call sign fee unfairly penalizes ICI because of its choice of technology. This is directly contrary to the Commission's frequently expressed goal of adopting policies designed to encourage the use and development of alternative technologies.[15] Assessing two sets of regulatory fees

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[13] Id. at Appendix F, ¶ 14.

[14] 1996 Fees Order at ¶ 19 (emphasis added).

[15] See, e.g., In the Matter of Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, First Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 96-6, FCC 96-283 (released August 1, 1996) at ¶ 19 (the potential uses of CMRS spectrum will not be limited to specific applications because the Commission prefers to encourage innovation and experimentation through a broader, more flexible standard); In the Matter of Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, and Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Notice of Proposed Rulemaking, MM Docket No. 94-131, PP Docket No. 93-253, 9 FCC Rcd 7665, 7666 (1994) (goal in streamlining application procedures for Multipoint Distribution Service is to promote alternative technology to cable television); In the Matter of Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, Report and Order, PR Docket No. 93-61, 10 FCC Rcd 4695, 4706 (1995) (expanding spectrum available to Location and Monitoring Service will encourage growth of alternative technologies, enabling consumers to satisfy their individual communications needs); FCC Chairman Reed E. Hundt, Address to the Harvard International Business Club, May 11, 1994 (personal communications services licensees should be given "unprecedented flexibility

(continued...)

disadvantages ICI vis-a-vis its competitors, which are subject to only one fee requirement. This disparate regulatory treatment makes it more difficult for ICI, as an alternative provider, to succeed in the marketplace. Thus, ICI asks that, insofar as it is subject to a separate call sign fee for the technology used to provide the underlying service, the Commission waive the gross revenues fee.[16/]

In the alternative, ICI requests that the Commission waive the call sign fee for those authorizations ICI uses primarily to provide interexchange service. While this approach would be more cumbersome to implement and police because of the difficulty in determining the primary purpose of a given authorization, it would eliminate the double charging problem.

For the foregoing reasons, ICI respectfully requests that the Commission waive the gross revenues fee assessed upon ICI's interexchange business utilizing point-to-point

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[15/](...continued)
to use the spectrum to provide those services that they believe will have the greatest commercial value and to do so using the technologies of their choice.").

[16/] Under ICI's proposal, the Commission could either waive the gross revenues fees outright or, consistent with the arrangements made for common carrier resellers, the gross revenues fees could be applied as a credit to ICI's call sign fee assessment.

microwave for the provision of its services in favor of a single fee assessment based upon the number of microwave call signs held by the company.

Respectfully submitted,

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(formerly and now d/b/a/ EMI Communications Corporation)

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